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10/685,280	10/14/2003	Wolfgang Hirschburger	0212.66894	4919
7590 04/27/2012 GREER, BURNS & CRAIN, LTD. Suite 2500 300 South Wacker Drive Chicago, IL 60606				
			EXAMINER PAUL, DISLER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WOLFGANG HIRSCHBURGER,  
RANDALL COE, and STEVE COLE

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Appeal 2010-001637  
Application 10/685,280  
Technology Center 2600

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*Before* LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and  
ANDREW J. DILLON, *Administrative Patent Judges*.

DILLON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-21. (App. Br. 3.) We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## STATEMENT OF THE CASE

Appellants' invention is directed to a portable battery charging device having an audio unit therein. When the device is connected to AC power, the AC power drives the audio unit and powers a battery charger. If the device is not connected to a source of AC power, the audio unit may be powered by the battery. *See Spec. 15, Abstract of the Disclosure.*

Claim 1 is illustrative, with key disputed limitations emphasized:

1. An apparatus comprising:

a housing having a number of walls, a top and a bottom;

a charger located in said housing for charging a removable battery pack of the type which is used to power rechargeable hand tools and other tools;

a receptacle operably connected to said charger and being capable of receiving a removable battery pack to be charged by said charger;

an audio unit for producing an audio signal located in said housing;

a cord and plug for connecting said apparatus to a source of AC power

a first circuit for connecting said cord to said charger and said audio unit, whereby AC power is applied to said audio unit to power the same and AC power is also applied to said charger;

a relay connected in circuit between a battery pack located in said receptacle and said audio unit;

*a relay coil connected in circuit between said cord and said audio unit, said coil monitoring the presence of AC power being applied to said audio unit and causing said relay to open circuit and electrically isolating said audio unit from said battery when AC power is applied to said audio unit and close circuit when AC power is not*

*applied to said audio unit, thereby enabling said battery pack to power said audio unit when AC power is not applied thereto.*

The Examiner relies on the following as evidence of unpatentability:

Bhagwat	US 4,835,409	May 30, 1989
Nee	US 5,272,431	Dec. 21, 1993
Smith	US 2002/0158604 A1	Oct. 31, 2002
Furusho	US D479, 223 S	Sept. 2, 2003
Kirk	US 2003/0169896 A1	Sept. 11, 2003
Stanesti	US 2004/0155627 A1	Aug. 12, 2004 (filed Aug. 27, 2003)
Kelly	US 6,921,596 B2	July 26, 2005

#### THE REJECTIONS

1. The Examiner rejected claims 1, 2, 5, 6, 12-14, and 16 under 35 U.S.C. § 103(a) as unpatentable over Smith and Bhagwat. Ans. 3-6.<sup>1</sup>
2. The Examiner rejected claim 3 under 35 U.S.C. § 103(a) as unpatentable over Smith, Bhagwat, and Stanesti. Ans. 6-7.
3. The Examiner rejected claims 7, 8, 17, and 18 under 35 U.S.C. § 103(a) as unpatentable over Smith, Bhagwat, and Kelly. Ans. 7-10.
4. The Examiner rejected claim 9-11 and 19-21 under 35 U.S.C.

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<sup>1</sup> Throughout this opinion, we refer to the Appeal Brief filed September 29, 2008, the Examiner's Answer mailed December 24, 2008, and the Reply Brief filed February 24, 2009.

- § 103(a) as unpatentable over Smith, Bhagwat, and Furusho. Ans. 10-12.
5. The Examiner rejected claim 4 under 35 U.S.C. § 103(a) as unpatentable over Smith, Bhagwat, and Nee. Ans. 12-13.
6. The Examiner rejected claim 15 under 35 U.S.C. § 103(a) as unpatentable over Smith, Bhagwat, and Kirk. Ans. 13-14.

### ISSUES

The dispositive issues before us, based upon the Appellants' arguments, are: (1) whether the Examiner erred by finding that the cited references disclose an apparatus having an audio unit and a battery charger for charging a battery pack where the apparatus includes a relay for electrically isolating the audio unit from the battery pack when AC power is applied to the apparatus and for enabling the battery pack to power the audio unit when AC power is not applied; and, (2) whether the combination of Smith and Bhagwat is improper?

### FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Smith discloses an audio equipment having a battery charger and a radio circuit. Smith 1, ¶[0006].
2. Smith discloses a switch means that permits a user to select to:
  - (a) provide power to the radio circuit and the battery charger;

- (b) provide power to the radio circuit from the battery pack; or,  
 (c) provide no power to any component. Smith discloses that the switch means may comprise relays, transistors or other switching devices. Smith 2, ¶[0031].
3. Bhagwat discloses a corded/cordless dual-mode power-operated device which can be operated from a conventional power source or from an internal rechargeable battery. Bhagwat, *See Abstract*.
4. Figure 4 of Bhagwat is reproduced below:

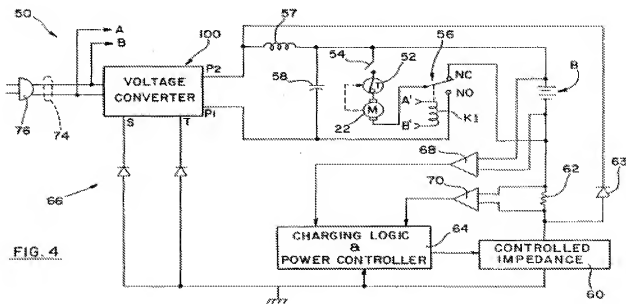


Figure 4 depicts a functional block diagram of a power and charging circuit for operating the Bhagwat device.

As depicted, relay K1 permits conventional power to be applied to the Bhagwat device when available. Relay K1 also disconnects the ungrounded side of battery B from motor 22 when conventional power is applied. When conventional power is removed, relay K1

switches, coupling the ungrounded side of battery B to motor 22.  
Bhagwat, Fig. 4, col. 4, l. 27 through col. 5, l. 61.

### ANALYSIS

Only those arguments actually made by the Appellants have been considered in this decision. Arguments which the Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. Consequently, the Examiner's rejections of claims 3, 4, 9-11, 15, and 19-21 are summarily affirmed. *See* 37 C.F.R. § 41.37 (c)(1)(vii) (2008).

Appellants provide similar arguments with respect to independent claims 1 and 17 (App. Br. 9-15, Reply Br. 1-3). Further, Appellants provide no separate arguments with respect to dependent claims 2, 5-8, 12-14, and 16-18. Accordingly, we select claim 1 as being representative of the claims. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants argue that Bhagwat fails to show or suggest electrically isolating motor 22 from battery B when conventional power is applied, noting that the positive terminal of battery B shown in Figure 4 is "always connected to the motor 22 whether the AC power is on or off." App. Br. 10. In further support of this position, Appellants point out that they depict both legs of the battery being disconnected from the audio unit in Figure 9 of their application. *Id.* at 10-11.

Appellants also argue that "Bhagwat cannot be combined with Smith without substantially altering the nature of the operation of Smith or Bhagwat" in view of the teaching within Smith that selection occurs by

means of a manual switch and Bhagwat does not permit operator selection.  
App. Br. 13.

The Examiner finds that both Smith and Bhagwat are pertinent to the problem of an electrical device which may be operated from conventional power or from a rechargeable battery. Ans. 15.

The Examiner also finds that Bhagwat does teach the electrical isolation of the device from the battery when electrical power is applied.  
Ans. 14.

We find that “Smith discloses an audio device and a battery charger in a single device.” FF1. Further, we find that Smith teaches a switching device which may be implemented with a relay for permitting the audio device to be powered by AC power or the rechargeable battery pack. FF2.

We find that Bhagwat discloses a similar device which may be powered by conventional power or a rechargeable battery. FF3. Finally, we find that Bhagwat discloses a relay which disconnects the ungrounded side of the battery from the motor when power is applied, effectively isolating the Bhagwat motor from the battery. FF 4.

We find that the common coupling of all grounded elements in the circuit of Figure 4 of Bhagwat does not diminish the Examiner’s finding that Bhagwat clearly discloses electrically isolating the battery from the motor when AC power is applied, and we adopt that finding as our own. Further, we find no definition of “isolate” within Appellants’ Specification which would require that both legs of the battery be disconnected.

Consequently, we are therefore not persuaded that the Examiner erred in rejecting representative claim 1 and claims 2, 5-8, 12-14, and 16-18, not separately argued with particularity.



CONCLUSION

The Examiner did not err in rejecting claims 1-21 under § 103.

ORDER

The Examiner's decision rejecting claims 1-21 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

llw